IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT :

THE HONOURABLE MR. JUSTICE A.K.BASHEER

SATURDAY, THE 1ST DECEMBER 2007 / 10TH AGRAHAYANA 1929

CRL.A.No. 1185 of 2003(M)

AGAINST THE JUDGEMENT/ORDER IN CRLP.193/2003 Dated 14/07/2003
CC.845/2000 of JUDL. MAGISTRATE OF FIRST CLASS, CHANGANACHERRY

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APPELLANT: COMPLAINANT:

K.N.BHASKARAN NAIR,
RAJASREE, PERUNNA, CHANGANASSERY.

BY ADV. SRI.PHILIP T.VARGHESE
SRI.THOMAS T.VARGHESE

RESPONDENTS: STATE AND ACCUSED:

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1. STATE OF KERALA,
REPRESENTED BY THE PUBLIC PROSECUTOR,
HIGH COURT OF KERALA, ERNAKULAM.

2. M.R.SREEDEVI AMMA,
PALLIPPURATHU ANJALIYIL, PERUNNA,
CHANGANASSERY.

BY ADV. SRI.JOHNSON ABRAHAM
SRI.S.GOPINATHAN
SRI.NELSON ABRAHAM
PUBLIC PROSECUTOR SRI.C.K.SURESH.

THIS CRIMINAL APPEAL HAVING BEEN FINALLY HEARD ON 01/12/2007, THE COURT ON THE SAME DAY DELIVERED THE FOLLOWING:

A.K. Basheer, J.

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Crl.A.No.1185 of 2003

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Dated this the 1st day of December, 2007.

J U D G M E N T

This appeal is at the instance of the complainant in a prosecution under Section 138 of the Negotiable Instruments Act. Appellant impugns the order of acquittal passed by the trial court. It is contended by him that the learned Magistrate was not justified in holding that the appellant-complainant had not succeeded in proving the case against the accused.

2. The case of the appellant/complainant was that the accused had issued Ext.P1 cheque dated February 1, 2000 for Rs.4 lakhs borrowed by her. When the said cheque was presented for encashment it was dishonoured for the reason that the accused had instructed the Bank to stop payment. In response to the statutory notice issued by the complainant, it was contended by the accused in her reply notice that there was no debt or liability to be discharged by her in favour of the complainant. She contended that a blank cheque along with some other blank papers, were handed over by her to the complainant in connection with another transaction.

3. After considering the oral testimony of the complainant who was examined as Pw.1 and also that of Dw.1, the husband of the accused, and after perusing Exts.P1 to P9 documents produced by the complainant, the court below found that the case set up by the

complainant with regard to the alleged transaction was not believable. It was noticed by the court below that the civil suit between the parties was pending as OS.407/98 before the Subordinate Judge's Court, Kottayam and yet another suit was also pending before the Munsiff Court, Changancherry. Further it had come out in evidence, as admitted by Pw.1, that he had lent money to the accused on several occasions which had accumulated to Rs.4 lakhs. The complainant alleged that the cheque was issued in discharge of the said liability/debt. According to the complainant he had paid the amounts to the accused on several occasions during the period between 1996 and 1998. Ext.P1 cheque was issued in 1999. As rightly noticed by the trial court, two civil suits were pending at the time when these alleged transactions took place. It had also come out on record that the accused had purchased a property with an extent of 6 cents from the complainant during 1996. The case of the accused was that in connection with the above transaction she happened to hand over a blank cheque and some other blank signed papers.

4. The learned Magistrate had considered all the above aspects while holding that the case of the complainant with regard to the issuance of cheque was not probable or believable. I do not propose to go any further into the above questions, since learned counsel for the appellant submits that the appeal preferred by the accused against the decree and judgment in OS.407/98 is pending consideration before the appellate court and any further discussion on the merit of the rival contentions may be avoided.

5. Having regard to the entire facts and circumstances I do not find any material illegality or irregularity in the finding entered by the trial court. In my view, the conclusion arrived at by the learned Magistrate was, in the facts and circumstances of the case, justified. There is no merit in the appeal. It is accordingly dismissed.

A.K. Basheer
Judge.

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